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IN THE
SUPREME COURT OF THE UNITED STATES

75-198

FRANK WALKER, JR.,
Petitioner

v.

STATE OF NORTH CAROLINA,
Respondent

PETITION FOR WRIT OF CERTIORARI
DIRECTED TO THE COURT OF APPEALS
OF NORTH CAROLINA

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STATE OF NORTH CAROLINA V DAWSON, 23 N.C. App. 712, 209 S.E. 503(1974).

STATE OF NORTH CAROLINA V SIMMONS, 278 N.C. 468, 180 SE 2d 97 (1971)

TRUPIANO V UNITED STATES, 68 Sup. Ct. 1229, 334 U.S. 699, 92 LEd. 1663.

JURISDICTION

The jurisdiction of this Court is invoked, the Petitioner respectfully submits, under 28 U.S.C. 1257 (3), and further under the Fourth and Fourteenth Amendments to the United States Constitution, and Sections 19 and 20, Article 1, Constitution of North Carolina. The Petitioner contends that his rights under the aforementioned Constitutional provisions have been suspended without legal justification, and that this Court should assume jurisdiction of this case.

Petition is made to this Court to review the opinion of the Court of Appeals of North Carolina in STATE OF NORTH CAROLINA vs. FRANK WALKER, JR., 7418SC943, and the denial of a petition for Certiorari by the Supreme Court of North Carolina to the Court of Appeals of North Carolina.

The petition to the Supreme Court of North Carolina was made in apt time under the Supplementary Rules of Practice of the Supreme Court of North Carolina (Rule 2). Said petition was denied on May 6, 1975 and certified to the Court of Appeals on the same date.

The petition for certiorari by the Supreme Court of North Carolina to the Court of Appeals of North Carolina served

to exhaust all state remedies before applying to this Court. The constitutional matters raised here were raised in the courts below. Jurisdiction of this Court is thus invoked within the time allowed by Rule 22 of the revised Rules of the Supreme Court of the United States, based upon considerations of Rule 19(1)(a) of the Supreme Court Rules of the United States.

STATEMENT OF CASE

Defendant-appellant-petitioner was tried on a warrant charging that he did unlawfully and wilfully have in his possession tickets, tokens, certificates and orders used in the operation of a lottery known as a numbers lottery, and further did cause to be sold and did sell tickets, tokens certificates and orders for shares in said numbers lottery at E. Lee Street and Hackett Street in Greensboro, N. C. The offense was deemed to have been in violation of North Carolina General Statute 14-291.1 which reads as follows:

"If any person shall sell, barter, or cause to be sold or bartered, any ticket, token, certificate, or order for any number or shares in any lottery, commonly known as the number or butter

and egg lottery, or lotteries of similar character, to be drawn or paid within or without the State, such person shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, in the discretion of the court. Any person who shall have in his possession any ticket, token, certificates or orders used in the operation of any such lottery shall be guilty under this section, and the possession of such tickets shall be prima facie evidence of the violation of this section". (North Carolina General Statute, Volume 1-B,p. 540

Preliminarily to the trial of the case on the merits thereof, defendant-appellant-petitioner moved the trial court to suppress the physical evidence in the case seized from within a sealed envelope and brown paper sack, said packages having been taken from a vehicle being operated by defendant at the time of his arrest, upon the ground of unlawful search and seizure. Said motion was heard at the April 15, 1974 Criminal Session of Guilford County Superior Court before the Honorable Charles T. Kivett, Judge Presiding. Following the reception of evidence on said motion and argument of the District Attorney for the State and Counsel for the defendant, the Court denied defendant's said motion to

suppress, to which defendant excepted in open court. (See pages 10 through 32 of the record of the trial court).

Defendant-appellant-petitioner raised the issue of unlawful search and seizure as his first assignment of error on appeal to the North Carolina Court of Appeals. In its opinion filed March 19, 1975 at 9:22 a.m., that court found that that exception and assignment of error was without merit, and affirmed the conviction. (See Appendix) Subsequently thereto, and in apt time, petition for Certiorari was made to Supreme Court of North Carolina by the defendant based upon the sole issue on unlawful search and seizure. Said petition was denied pro forma on May 6, 1975. (See Appendix).

STATEMENT OF FACTS

The State offered evidence tending to show the following: At about 6:25 a.m. on 4 February, 1974, Detectives Hill and Tysinger of the Greensboro Police Department stopped a white Volkswagen automobile operated by the defendant-appellant-petitioner near the intersection of East Lee and Hackett streets in the City of Greensboro, North Carolina. The Defendant, who was the only occupant of

the car, got out of the Volkswagen and walked towards the police car. Detective Hill walked past the defendant and shined his flashlight into the Volkswagen. He observed a "heavily taped package" lying on the floorboard on the passenger side of the car. He observed on the outside of the package the marking "P-7". He testified that he recognized the marking as a code used in the operation of a numbers lottery. Thereafter, Officer Hill turned and walked toward Mr. Walker, who was at that time showing his driver's license to Detective Tysinger. Then and there Detective Hill placed Mr. Walker under arrest for operating a numbers lottery. Detective Hill also observed a "large paper bag" on the floorboard on the driver's side of the car. After arresting the defendant, he seized both the heavily taped package and the large paper bag. Officer Hill testified that he did not know what was inside the sealed envelope and bag at the time he seized them from the Volkswagen (R-p. 30). He testified that he just assumed it contained contraband. He further testified that "we (Tysinger and Hill) did not at that time, arrest Mr. Walker for any traffic violations. The main reason we stopped him was that we suspected this was the car that may have some contraband in it. We stopped him (Walker) for the very purpose of ascertaining whether there

was contraband in the car". (R-p-30).

After defendant-appellant-petitioner had been placed under arrest, the "sealed envelope" (State's exhibit #1), the brown paper bag (State's exhibit #2), and envelopes (State's exhibit #3) seized from within the brown paper bag, were transferred from the possession of Detective Hill to the possession of Detective Dotson who had been summoned after the arrest to the location of Lee and U. S. 29, where the defendant had been stopped. Subsequent to that transfer, Detective Dotson transported the objects to the Vice Division office of the Greensboro Police Department. There, the envelopes comprising State exhibit #3 which had been seized from the brown paper bag marked State exhibit #2, were broken open, searched, and money seized therefrom and inventoried without the authority of a search warrant in the Vice Division office. Subsequent to that unauthorized search and seizure, the heavily sealed envelope (State exhibit #1) was also broken into and searched by Officer Dotson in the vice division office, thereby revealing other envelopes marked State's exhibit #4. Thereafter, a sample envelope comprising exhibit #4 was broken into and searched without authority of a search warrant. Discovered and subsequently

seized from within it was sixty-two dollars and ninety-five cents along with 17 paper writings on pages from a pad. (R-p-40). It was these seventeen paper writings that were described and received into evidence at the trial as LOTTERY TICKETS.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT-PETITIONER'S TIMELY MOTION TO SUPPRESS THE SEVENTEEN SLIPS OF PAPER WRITING SEIZED FROM WITHIN STATE'S EXHIBIT #4 WITHOUT AUTHORITY OF A SEARCH WARRANT, SAID STATE'S EXHIBIT #4 ITSELF HAVING BEEN SEIZED WITHOUT AUTHORITY OF A SEARCH WARRANT FROM WITHIN STATE'S EXHIBIT #1.

Evidence obtained by means of an unreasonable search is inadmissible in both federal and state courts. U. S. CONSTITUTION AMENDMENTS IV, V AND XIV; N. C. CONSTITUTION, ART. 1, SECTION 20; MAPP VS OHIO, 367 U. S. 643(1961); STATE VS SIMMONS 278 N. C. 468, 180 SE sd 97 (1971)

It is clear that under United States and North Carolina law, contraband material in PLAIN VIEW may under certain limited circumstances be seized without a search warrant, and admitted into evidence at trial. COOLIDGE V NEW HAMPSHIRE, 91 S. Ct. 2022 403 U.S. 443, 29 L. Ed 2d 564.

STATE vs SIMMONS, Supra; STATE vs DAWSON, 23 N.C. App 712, 209 SE 503 (1974).

The North Carolina Court of Appeals took the position in its opinion that the seizure of contraband in instant case at bar did not require a search warrant because the contraband's presence was fully disclosed without the necessity of a search. The Court of Appeals held that the officers were justified in seizing the items containing the money and lottery tickets, because both the "heavily taped" package with the number "P-7" written on it, and the brown paper bag were in plain view on the floorboard of the car, based upon the holdings of STATE vs SIMMONS, supra; STATE VS DAWSON; Supra. The North Carolina Court of Appeals further held that the fact that Detective Hill saw the aforementioned articles with the aid of a flashlight did not negate their admissibility. STATE v CRADDOCK, 272 N.C. 110, 158 SE 2d 25(1967)

Defendant-appellant-petitioner asserts that the aforementioned reasoning as applied to the facts in his case is faulty and misapplied on its face, and ought to be reviewed by the highest court of this land.

The statute under which petitioner was tried and convicted is North Carolina General Statute 14-291.1. This statute is a criminal statute, and ought to be construed

strictly against the State of North Carolina. HINES & BATTLE V WILMINGTON & W. R. R., 95 N. C. 434; SEARS V WHITAKER, 136 N.C. 37, 48 S.E. 517; ALEXANDER V ATLANTIC COAST LINE R. R., 144 N.C. 93, 56 S.E. 697. HAMLET GROCERY CO. V SOUTHERN RY., 170 N. C. 241, 87 S. E. 57. N.C. General Statute 14-291.1 undertakes to enumerate the specific and particular items or objects, whose possession by anyone is prohibited and punishable by this statute. The General Assembly of North Carolina, the legislative branch of this State's legal system, in drafting this particular statute, did undertake to enumerate and designate, and did enumerate and designate those items or objects to be considered contraband under GS 14-291.1. CONTRABAND has been defined as anything whose possession has been prohibited or excluded by law. BRINEGAR VS STATE, 338 U.S. 45160, 69 Su. Ct. 302, 97 OKL. Cr. 299. The legislature spoke its collective will by designating TICKET, TOKEN, CERTIFICATE or ORDER for any number or butter and egg lottery...as contraband under GS 14-291.1. There can be no doubt, and the State of North Carolina, guided by honesty, fairmindedness, and a strict construction of the statute, must concede, that the only items or objects designated by its legislature as contraband under GS 14-291.1 are tickets, tokens, certificates and orders. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

Co. Litta; BURGIN vs FORBES, 293 Ky. 456, 169 S. W. sd 321, 325. NEWBLOCK vs. BOWLES, 170 Okla. 487, 40 Psd 1097, 1100. The aforesaid premises considered, any reference to contraband in the opinion of the North Carolina Court of Appeals would necessarily have to be to either a ticket, token, certificate or order used in the operation of a lottery, seized by officers and introduced at trial.

The State of North Carolina introduced, and the Trial Court received into evidence over defendant's timely objection, four exhibits at petitioner's trial. These exhibits may be accurately enumerated and described as follows:

STATE'S EXHIBIT #1-an ENVELOPE with P-7 marking on its surface. This envelope was described at trial by Hill, as being "heavily taped" when Hill discovered the envelope's existence with the aid of a flashlight on the floorboard of the automobile driven by petitioner. Detective Hill further testified that at the time he observed the sealed envelope, he did not know what was inside of it.

STATE'S EXHIBIT #2-a brown PAPER BAG observed by Detective Hill on the floorboard of the automobile by the driver's side. Again, Detective Hill testified that he did not know what was in the bag at the time he observed it and seized it from the car. He testified that he only assumed that

it contained contraband.

STATE'S EXHIBIT #3-described as ENVELOPES that were contained and seized from within State's Exhibit #2 without authority of a search warrant.

STATE'S EXHIBIT #4-a sample ENVELOPE seized from within the heavily taped sealed envelope marked STATE'S exhibit #1. Said seizure of this exhibit was made after a warrantless breaking of seal and search of State's Exhibit #1 by Detective Dotson in the Vice Division Office of the Greensboro Police Department. It was from within this envelope marked State's exhibit #4 that there was seized sixty-two dollars and ninety-five cents, along with seventeen slips of paper with writing on each, described as LOTTERY TICKETS (R-p-40).

Petitioner respectfully submits that the seraches of State's Exhibits Nos. 1 and 4 were illegal searches as they were conducted without authority of a search warrant as required by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

Petitioner further submits that the objects seen by arresting officer Hill, on the floorboard of the automobile driven by petitioner, and in plain view with the

aid of a flashlight, namely State's Exhibits #1 and #2, were not contraband in fact or law, nor did the State of North Carolina proceed to convict petitioner upon that theory. State's Exhibits #1 and #2 were in fact and were evidently considered by the prosecution to be, objects which were packaging containers for other objects. The only inanimate items identified and/or introduced into evidence as either a lottery TICKET, TOKEN, CERTIFICATE or ORDER were seventeen slips of paper with writing on them, seized from within State's Exhibit #4.

The error that the Court of Appeals commits in confusing by comingling the items observed by Hill with the concept of contraband can be vividly seen in this excerpt of the opinion of the North Carolina Court of Appeals in this case at bar.

"While the defendant was showing Detective Tysinger his driver's license, Detective Hill shined his flashlight into the car and observed a "brown paper sack" lying on the floorboard on the passenger side of the car with the number "P-7" written on it. Because Hill had seen "numbers used in the operation of lotteries of this nature numerous times", he arrested the defendant. Thereafter, he seized both the package and the "brown paper sack".

"Based on the evidence adduced at the voir dire, Judge Kivett concluded that the officers had the right to stop the vehicle being operated by the defendant and the right to SEIZE THE OBJECTS THEY SAW IN CLEAR VIEW WITH THE FLASHLIGHT.

We think the facts and circumstances of this case were sufficient to furnish the officers reasonable grounds to believe that particular Volkswagen automobile, which was driven by the defendant, contained contraband materials used in the operation of a numbers lottery. "FURTHERMORE, SINCE THE SEIZURE OF CONTRABAND DOES NOT REQUIRE A WARRANT WHEN ITS PRESENCE IS FULLY DISCLOSED WITHOUT THE NECESSITY OF A SEARCH, STATE VS. KINLEY, SUPRA, THE OFFICERS WERE JUSTIFIED IN SEIZING THE ITEMS CONTAINING THE MONEY AND LOTTERY TICKETS." STATE VS SIMMONS, supra; STATE VS DAWSON, supra. Both the heavily taped package with the number "P-7" written on it and the brown paper bag were in plain view on the floorboard of the car. The fact that Detective Hill saw the articles with the aid of the flashlight does not negate their admissibility." (STATE VS CRADDOCK), 272 N. C. 160, 158 S. E. sd 25 (1967). See Appendix for the entire text of the opinion.

IN CHIMEL V CALIFORNIA, 89 Sup. Ct. 2034, 395 U. S. 752 the Court, in an opinion by Mr. Justice Stewart, assumes without deciding, that the warrantless arrest was valid. But the conviction was overturned on the basis of the extent of the search made without a search warrant. The Court states: "There is ample justification for a search of the arrestee's person and the area "within his immediate control"-construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence." In PRESTON V UNITED STATES, 376 U. S. 364, 84 Sup. Ct. 881, 11 LEd sd 777. The court held that "the rule allowing a contemporaneous search is justified by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime-things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under arrest and in custody, then a search made at another place, without a warrant is simply not incident to the arrest."

The Court in PRESTON supra went further: "The search of the car was not undertaken until petitioner and his companions had been arrested and taken in

custody and the car had been towed to the garage. At this point there was no danger that any of the men arrested could have used any weapons in the car or could have destroyed any evidence of a crime." (376 U.S. 368). In the case at bar, the breaking of the seal and search of the "heavily taped envelope" was not undertaken until petitioner had been arrested and taken in coustody and the sealed envelope had been taken to Vice Office of the Greensboro Police Department. At that point, there was no danger that petitioner could have destroyed any evidence of a crime.

It is clear that the aforementioned case of CHIMEL V CALIFORNIA does two important services to petitioner's case. First, CHIMEL reinforces the PRESTON Doctrine, namely that besides limiting searches made incident to arrest, search warrants are essential whenever there is sufficient time to obtain them. Secondly, CHIMEL injects such vitality into the essentiability of search warrants, the effect thereof is to revive TRUPIANO V UNITED STATES, 334 U. S. 699, 68 Sup. Ct. 1229, 92 LEd. 1663 (6/14/48), while overruling UNITED STATES V RABINOWITZ, 339 U. S. 56, 70 Sup. Ct. 430, 94 LEd. 653 (2/20/50) and HARRIS V UNITED STATES, 331 U. S. 145, 67 Sup. Ct. 1098, 91 LEd. 1399 (5/5/47).

There can be no doubt that while there had been no search of the automobile

that Petitioner was driving at the time the "heavily taped" sealed envelope was seized therefrom, there is an equal absence of doubt that Detective Dotson conducted a search of the "heavily sealed envelope" in the Vice Division of the Greensboro Police Department, without the authority of a search warrant. Said search was conducted at a time and place far removed from the arrest of petitioner and conducted at a time where officers were possessed of such evidence which a magistrate might have found to establish probable cause for issuing a search warrant for the sealed personal effects of petitioner. See JOHNSON V UNITED STATES, 333 U. S. 10, 68 Sup. Ct. 367, 92 LEd. 436 (2.2/48). Detective Hill recognized the markings "P-7" as a code used in the lottery operation in Greensboro, North Carolina, based upon experience and expertise in the area of numbers lotteries. Hill testified that the reason he and Detective Tysinger stopped petitioner was to ascertain whether the car he was driving contained contraband. He further testified he did not know what was inside the heavily taped envelope and brown paper bag at the time he observed it with the aid of a flashlight. Based upon the evidentiary facts within Detective Hills knowledge subsequent to the time he saw the markings on the envelope, it is likely that a magistrate might find probable cause for issuing a search warrant for the sealed package under the JOHNSON holding supra.

CONCLUSION

Petitioner proffers the following query, as one of first impression, and as one which reflects the gravity of the issue before the Court.

Where does the United States Supreme Court hold that the physical autonomy of an opague, inanimate object (a sealed package that is heavily taped) end, and the physical autonomy of other inanimate objects (17 lottery tickets) begin, where the 17 lottery tickets are completely enclosed and hidden from one's view (aided or unaided) within the sealed opague package?

Petitioner contends that the invasion of the sealed envelope (State's Exhibit #1) for the purpose of searching for contraband exceeded the physical autonomy of that sealed envelope in the absence of a search warrant based upon probable cause. Likewise, the subsequent unauthorized invasion of a sample envelope comprising State's Exhibit #4, itself having been seized without authority of a search warrant compounded the initial unauthorized invasion of State's Exhibit #1. Therefore, the seizure of the seventeen separate paper slips described as lottery tickets from within State's Exhibit #4 was unconstitutional as having been done in

far excess of the Constitutional authorization.

Therefore, the petitioner urgently beseeches this Honorable Court to grant his petition for a writ of certiorari in this cause. He predicates this appeal upon denial to him of a basic Federal Constitutional right. He contends that his claim falls within the proscriptions set forth in cases decided by this Court, alluded to in the arguments herein. While the Petitioner is advertent to the heavy load this Court must bear, he submits that the pronouncements of this Court with respect to the constitutional liberties, in connection with which this Court is the last resort, became a vain and empty thing, unless they are made available to citizens on an individual basis. Without the intervention of this Honorable Court, effective relief in a situation where the Petitioner contends his Federal Constitutional rights have been grossly abused and abridged, will be forever denied and foreclosed.

The petitioner respectfully prays the Court that his petition for a writ of certiorari be granted.

Respectfully Submitted,

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APPENDIX I

NO. 7418SC943 FOURTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA

v. From Guilford

FRANK WALKER, JR.

Appeal by defendant from Crissman, Judge. Judgment entered 31 July 1974 in Superior Court, Guilford County. Heard in the Court of Appeals 22 January 1975.

This is a criminal prosecution wherein the defendant, Frank Walker, Jr., was charged in a warrant with the unlawful sale of lottery tickets in violation of G. S. 14-291.1.

The State offered evidence tending to show the following: At about 6:25 a.m. on 4 February 1974, Detectives Hill

and Tysinger of the Greensboro Police Department stopped a white Volkswagen automobile operated by the defendant near the intersection of East Lee and Haskett Streets in the City of Greensboro. The defendant, who was the only occupant of the car, got out of the automobile and walked towards the police car. Detective Hill walked past the defendant and shined his flashlight into the Volkswagen. He observed a "heavily taped package" lying on the floorboard on the passenger side of the car. He recognized the number "P-7", which was written on the outside of the package, as a code number used in the operation of a numbers lottery and arrested the defendant for "operating a ...lottery". Detective Hill also observed a "large paper bag" on the floorboard on the driver's side of the car. After arresting the defendant, he seized both the package and the paper bag. The two items taken from defendant's automobile contained $1,738.70 and pieces of paper with numbers and letters written on them. Detective Hill testified that he had been assigned to the Vice Division of the Greensboro Police Department for two years and that the Vice Division handles numbers lottery cases. On 4 February 1974 he was specifically looking for the automobile being driven by the defendant.

Over defendant's objection, Larry Gibson, a member of the Vice Division of the Greensboro Police Department from

October 1970 until January 1974, was allowed to testify as an expert witness in the field of numbers lotteries. After explaining to the jury how a numbers lottery is operated, Gibson testified that the items contained in the package and bag taken from the Volkswagen automobile were "tickets, tokens, certificates and money used in the operation of a numbers lottery".

Defendant did not testify or offer any evidence in his own behalf.

The jury found the defendant "guilty as charged". From a judgment imposing a jail term of two (2) years, which was suspended and the defendant placed on probation, defendant appealed.

Attorney General Edmisten by Assistant Attorney Rafford E. Jones for the State.

Taylor & Upperman by Leroy W. Upperman, Jr., and Herman L. Taylor for defendant appellant.

HEDRICK, Judge.

Defendant contends the trial court erred in admitting into evidence, over his objection and motion to suppress, the money and lottery tickets taken from his automobile without a search warrant.

Evidence obtained by an unreasonable search is inadmissible in both federal and state courts. U. S. Const., Amend. IV and V; N.C. Const., Art. I, sec. 20; Mapp v. Ohio, 367 U.S. 643 (1961); State v. Simmons, 278 N.C. 468, 180 S.E. 2d 97 (1971). However, it is equally well-settled that when contraband material is in plain view no search is necessary and the constitutional guarantee against unreasonable search and seizure does not prevent either the seizure of the contraband without a warrant or its introduction into evidence. State v. Simmons, supra; State v. Virgil, 276 N. C. 217, 172 S.E. 2d 28 (1970); State v. Kinley, 270 N.C. 296, 154 S.E. 2d 95 (1967); State v. Dawson, 23 N.C. App. 712, 209 S.E. 2d 503 (1974), cert. denied, 286 N.C. 417, _____ S.E. 2d_____ (1975). Automobiles and other conveyances may be searched without a warrant under circumstances that would not justify the search of a house, and a police officer in the exercise of his duties may search an automobile when the existing facts and circumstances are sufficient to support a reasonable belief that the automobile carries contraband materials. Carroll v U. S., 267 U.S. 132 (1925); State v. Simmons, supra.

In the instant case, a voir dire hearing was conducted by Judge Kivett prior to defendant's trial to determine the admissibility into evidence of the

articles seized. Detective B. R. Dotson testified that he and several other members of the Vice Division of the Greensboro Police Department, including Detective Hill, had maintained a surveillance of a house located at 614 Bennett Street in Greensboro during January and the first part of February of 1974. They had information to believe that the house was being used in the operation of a numbers lottery as a pickup point in the collection process of money and lottery tickets.

On six different occasions between 18 January 1974 and 1 February 1974, Detective Dotson observed a light-colored Volkswagen with one tail light out and a bent license tag with the prefix "AZR" stop in front of the house at 614 Bennett Street. Each time, at approximately 7:00 a.m., the driver would turn off his lights and pull over to the curb. A man would then come out of the house and hand a package to the driver, the sole occupant of the car. The Volkswagen would then proceed down the street.

On 4 February 1974 at 6:00 a.m., Detective Dotson and another officer, following the above described procedure, stopped their automobile in front of 614 Bennett Street. A black male, identified as Woodrow Crump, came out of the house and

handed them a package containing money and lottery tickets. The officers arrested Crump; and Detectives Hill and Tysinger, who were present at the time of the arrest, stationed themselves in an unmarked patrol car around the corner from the house. At approximately 6:20 a.m., the light colored Volkswagen with one tail light out with the license plate bent in such a manner so that only the prefix "AZR" was visible, which the officers had observed on other occasions, passed slowly by the officers but did not turn the corner and stop in front of 614 Bennett Street. The officers gave pursuit and stopped the automobile, which was being driven by the defendant. While the defendant was showing Detective Tysinger his driver's license, Detective Hill shined his flashlight into the car and observed a "brown paper sack" lying on the floorboard on the driver's side of the car with the number "P-7" written on it. Because Hill had seen "numbers used in the operation of lotteries of this nature numerous times", he arrested the defendant. Thereafter, he seized both the package and the "brown paper sack".

Based on the evidence adduced at the voir dire, Judge Kivett concluded that the officers had the right to stop the vehicle being operated by the defendant and the right to seize the "objects they saw in clear view with the flashlight".

We think the facts and circumstances of this case were sufficient to furnish the officers reasonable grounds to believe that this particular Volkswagen automobile, which was driven by the defendant, contained contraband materials used in the operation of a numbers lottery. Furthermore, since the seizure of contraband does not require a warrant when its presence is fully disclosed without the necessity of a search, State v Kinley, supra, the officers were justified in seizing the items containing the money and lottery tickets. State v Simmons, supra; State v. Dawson, supra. Both the heavily taped package with the number "P-7" written on it and the brown paper bag were in plain view on the floorboard of the car. The fact that Detective Hill saw the articles with the aid of a flashlight does not negate their admissibility. State v. Craddock, 272 N.C. 160, 158 S.E. 2d 25 (1967).

Defendant next contends the trial court erred in denying his motion to quash the warrant because the warrant failed to allege all the essential elements of the offense defined by G. S. 14-291.1. The pertinent portion of the warrant charged that the defendant

"...did unlawfully, wilfully, have in his possession tickets, tokens, certificates and orders used in the operation of a lottery commonly known as a numbers lottery and further did cause to be sold and did sell tickets, tokens, certificates, and orders for shares in said numbers lottery at E. Lee St. and Hackett St. Greensboro, N. C.

The offense charged here was committed against the peace and dignity of the State and in violation of law NCGS 14-291.1."

G.S. 14-291.1 provides:

"If any person shall sell, barter or cause to be sold or bartered, any ticket, token, certificate or order for any number or shares in any lottery, commonly known as the numbers or butter and egg lottery, or lotteries of similar character, to be drawn or paid within or without the State, such person shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, in the discretion of the court. Any

> person who shall have in his possession any tickets, tokens, certificates or orders used in the operation of any such lottery **shall be guilty under this section, and the possession of such tickets shall be prima facie evidence of the violation of this section."**

Defendant argues that the warrant here is fatally defective in that it failed to allege that there was to be a "drawing or paying at any time, either within or without the State...." A warrant is sufficient if it clearly gives the defendant notice of the charge against him so that he might prepare his defense, enables him to plead former acquittal or conviction should he again be brought to trial for the same offense, and enables the court to pronounce judgment in case of conviction. State v. Teasley, 9 N. C. App. 477, 176 S. E. 2d 838 (1970).

In State v. Lipkin, 169 N. C. 265, 271, 84 S.E. 340, 342 (1915), our Supreme Court said:

> "A lottery, for all practical purposes, may be defined as any scheme for the distribution of prizes, by lot or chance, by which one, on paying money or giving any other thing of value to another, obtains a token which entitles him to receive a larger or smaller value, or nothing,

> as some formula of chance may determine."

A lottery is a chance for a prize for a price. Black's Law Dictionary 1097 (4th Ed. 1968). Thus, since the warrant charges the defendant with the sale of tickets and tokens to be used in a numbers "lottery", we are of the opinion that none of the essential elements of the offense has been omitted from the warrant. The word "lottery" embraces the elements of chance and prize. The warrant, in our opinion, is sufficient to give the defendant notice of the offense charged, to allow him to plead former jeopardy, and to allow the court to proceed to judgment. This assignment of error is overruled.

Finally, defendant contends the trial court erred in permitting Larry Gibson to testify as an expert witness in the field of numbers lotteries.

> "Whether the witness has the requisite skill to qualify him as an expert is chiefly a question of fact, the determination of which is ordinarily within the exclusive province of the trial judge. To be an expert the witness need not be a specialist or have a license from an examining board or have had experience with the exact type of subject

matter under investigation, nor need he be engaged in any particular profession or calling. It is enough that, through study or experience, or both, he has acquired such skill that he is better qualified than the jury to form an opinion on the particular subject.

A finding by the trial judge that the witness possesses the requisite skill will not be reversed on appeal unless there is no evidence to support it or the judge abuses his discretion." 1 Stansbury, N. C. Evidence (Brandis Rev.) sec. 133 (footnotes omitted) Accord, State v. Vestal, 278 N. C. 561, 180 S.E. 2d 755 (1971).

There is plenary evidence in this record to support the finding of the trial judge that Gibson was quialified to testify as an expert in the field of numbers lotteries. Gibson testified that he worked as a "Vice Squad" Detective with the Greensboro Police Department for four years and was specifically assigned to numbers lottery cases one year. Furthermore, he testified that he had read several books about numbers lotteries, had received instruction in

the field of numbers lotteries "in two... schools on criminal investigation", and had previously testified for the State as an expert witness in the field of numbers lotteries. This assignment of error is overruled.

Defendant had a fair trial free from prejudicial error.

No Error.

Judges MORRIS and PARKER concur.

APPENDIX II

NO. 85PC EIGHTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Spring Term 1975

* * * * * * * * * * * * * * * * * *

STATE OF NORTH CAROLINA)
)ORDER DENYING
v)PETITION FOR
)WRIT OF CERTIORARI
FRANK WALKER, JR.)

* * * * * * * * * * * * * * * * * *

This cause came on to be considered upon the petition of the defendant for writ of certiorari to review the decision of the North Carolina Court of Appeals; upon consideration whereof, it is adjudged by the Court here, that the petition be denied and that it be so certified to the said North Carolina Court of Appeals to the intent its decision be affirmed; the order for stay of execution of the judgment heretofore entered is hereby

dissolved.

Witness my hand and the seal of the Supreme Court, this 6 day of May, 1975.

S/ Adrian J. Newton
Clerk of the Supreme Court
of North Carolina

cc: Taylor, Upperman & Johnson, Attorneys at Law

Rafford E. Jones, Assistant Attorney General

E. Taymond Alexander, Jr., District Attorney

APPENDIX III

CONSTITUTION OF THE UNITED STATES

AMENDMENT IV

The right of the people to be secure in their persons, houses papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

AMENDMENT XIV Sec. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF NORTH CAROLINA

Art. I, sec. 19. LAW OF THE LAND; EQUAL PROTECTION OF THE LAW.

No person shall be taken imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion or national origin.

Art. I, sec. 20. GENERAL WARRANTS.

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence are dangerous to liberty and shall not be granted.

NORTH CAROLINA GENERAL STATUTE 14-291.1

SELLING "NUMBERS" TICKETS: POSSESSION PRIMA FACIE EVIDENCE OF VIOLATION.

If any person shall sell, barter or cause to be sold or bartered, any ticket, token, certificate or order for any number or shares in any lottery, commonly known as the numbers or butter and egg lottery, or lotteries of similar character, to be drawn or paid within or without the state, such person shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, in the discretion of the court. Any person who shall have in his possession any tickets, tokens, certificates, or orders used in the operation of any such lottery shall be guilty under this section, and the possession of such tickets shall be prima facie evidence of the violation of this section.